

Construction defect issues hampering the development of attainable housing throughout Colorado

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There is a lack of attainable housing in Colorado Springs and across the state. Condos, townhomes and other multi-family developments are scarce, leaving young professionals, first-time home buyers, military personnel who don't want to anchor themselves to a home and baby boomers looking to downsize in a tough predicament. "What's happened in the marketplace, is that someone has a problem with their particular unit – primarily condominiums – and they engage an attorney. The attorney then goes to the HOA and tries to get them to file a class action lawsuit against the builder," says Darrell Wass, Immediate Past-Chairman of The Pikes Peak Association of REALTORS® (PPAR). Wass has testified before the City Council on this issue, and describes "Even if only one building out of 15 to 20 buildings in the complex has a problem, all of a sudden the entire HOA is involved in a lawsuit without the homeowners even knowing."

The chain reaction from this legal action affects the homeowners, the builders and the community at large. Because of the lengthy and expensive legal process, builders have no incentive to construct owner-occupied, multi-family housing. In Denver, condos comprised of 20 percent of the metro Denver new housing market in 2005, while today they have plummeted to only two percent. The opposing viewpoint is that if you build a better housing structure then you can avoid these problems, but because this issue has been so pervasive in litigation, even top, trusted builders don't want to go down this path of building multi-family housing and risk a lawsuit because of a defect found in one solitary unit.

At the same time, homeowners are being victimized, and do not find out that they are part of a class action lawsuit until they are trying to refinance or sell their condo or townhome and they can't. This results in cases like one in Aurora, where a REALTOR® has been helping a client navigate the litigation process for more than six years. Another woman has testified at 68 years old – she has come into health issues, is only five payments away from paying off her condo, and needs to tap into her home equity line of credit (HELOC) to pay for medical procedures. She went to the bank and they turned her down because her condo complex is in the middle of litigation, and banks will not lend money during litigation. These processes can go on for two to six to eight years because the court that handles these cases is backed up. The system as it stands is not reasonable for people who want to tap into their own home resources.

Naturally, this also effects the local real estate industry. Wass says, "As a good buyer's agent you need to counsel your buyer that 'this is the problem happening with this condo development and HOA,' and you need to make sure that your client is aware of the potential problems that may result." For many people, these multi-family homes serve as an entry point to homeownership – but instead they are stuck renting. George Nehme, Government Affairs Chair of PPAR, says "40 percent of working Colorado

renters spend more than one-third of their income on rent and 25 percent of working Colorado renters spend more than one-half of their income on housing; but we are trying to help get residents into homeownership. We have a huge demand for entry level housing, with homes priced in the 200's selling before they even officially hit the market. Multi-family homes fulfill a need within our community."

PPAR is gearing their advocacy efforts towards passing Senate Bill 156. The bill "provides a common sense and balanced solution that protects consumers from faulty construction while also increasing attainable options for home ownership." It requires that HOAs who are considering litigating construction defect issues 1. Obtain written consent of a majority – 51 percent – of homeowners in the association 2. Disclose projected costs, duration and financial impact of the claim and 3. Enter into mediation or arbitration by a neutral third party. Alternative Dispute Resolution (ADR) – such as mediation and arbitration by a mutually agreed upon third party service provider – is a legally enforceable, effective, less costly and less time-consuming method of resolving disputes.

"No one wants to take away the property rights of the person who has a problem, we are just trying to protect the property rights of all of the other people in the complex who are also affected," says Wass. The bill does not prevent single homeowners from taking legal action against the builder for construction defects, but it does limit a lawyer's ability to go in and sue the builder on behalf of the common interest communities over an issue found in a few or even one unit. These lawsuits where it's maybe the windows or the pipes that are the issue, instead of going after the contractors who installed or built the windows or pipes, trial lawyers are going after anyone who has any kind of insurance money for the settlement. A central concern is that these cases revolve around making the trial lawyers money, rather than fixing the actual construction defect issues.

Eighteen counties or cities across Colorado have passed local ordinances concerning construction defects that are similar to SB 156, but there are concerns that state law may continue to hamper the development of multi-family housing. In December of 2015, the Colorado Springs City Council passed their own ordinance, which only applies to Colorado Springs. In part, it requires that the construction defect has to affect five or more units. Notice must go to all homeowners and they must be informed of the nature of the action and the relief being sought, including fees and other expenses, the expected recovery, and how sales or refinancing of the unit during the lawsuit might be problematic – among other information. The consent of the majority of the homeowners is required before the homeowners association can file suit. The ordinance also provides builders with the opportunity to offer cash settlements and/or repair of defects before a suit is filed.

The Pikes Peak Association of REALTORS® is asking the legislature to consider standardization as opposed to every municipality having a piecemeal approach to resolving the problem. Nehme says, "We're hoping to see movement on this case in the

next two to three weeks. We are very supportive of this bill at both the city and state level and hope to see the House pass the bill sooner rather than later.”

For more information, visit Housing4Co.org. To take action, click on the “Take Action” link and contact your elected officials to support passage of Senate Bill 156.

To learn more about Pikes Peak Association of REALTORS®, visit PPAR.com.